(Spl.-H.C.A.S.C.D., 78-e)

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA.
APPELLATE SIDE

DISTRICT :

SECOND APPEAL NO. 70 OF 2004.

Office Notes, Office Memoranda of Quorum, appearances,Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. A. R. Kantak, Advocate for the Appellant.

Mr. N. Sardessai, Advocate for the Respondents.

CORAM : B. H. MARLAPALLE, J.

DATE : 8TH OCTOBER, 2004.

P.C. :

Heard Mr. Kantak, Advocate for the Appellant who was included as Defendant No. 1 in Regular Civil Suit No. 381/01 which was originally registered as Special Civil

The plaintiff's case was that she owned residential house bearing no.26 at Deusa and the defendant no.1 is the owner of the landed property situated on the western boundary of the plaintiff's house. Sometimes in the first week of May, 1989, defendant no.1 started digging a well at a distance of about 9 mts. from the plaintiff's house. On both 4th & 11th May there were some blasts carried out for digging of the well and on action of the same, the plaintiff's house developed some cracks in the wall of entrance hall. The plaintiff contended that these cracks were on account of explosives used. She had approached the Police Station subsequently and file d F.I.R. No.

68/89. She prayed for damages to the tune of Rs. 95,000/- under different heads. The defendant no. 1 filed a return statement and opposed the suit. However, the Learned Civil Judge, Senior Division at Margao on arising at the oral and documentary evidence held that on 11.5.1989 the defendant blasted gelatine for digging the well and to some extent cracks on the wall in the petitioner's house were on account of the same blast. Claim for damages to the tune of Rs. 95,000/- was turned out. The claim was decreed at Rs. 10,000/- by judgment and order dt. 26.7.01.

This decree was carried in Regular Civil Application No. 108/01 and the same was dismissed by the Learned Additional

District Judge at Margao on 16.2.04.

On assesment of the evidence, both oral and documentary, the factum of blasts having been carried out at instance of defendant 1 has been duly established and these blasts were the cause to some extent for the cracks developed on the walls of the plaintiff's house. The damage was estimated at Rs. 1,00,000/- . Both the courts below meticulously examined and assessed the damages at Rs. 10,000/- . The assesment made cannot be held to be either perverse or unreasonable and the factum of blasts has been duly proved on the basis of the evidence.

No substantial question of

law arises in the Second Appeal and the same is dismissed in limine.

B. H. MARLAPALLE, J.

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